

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, June 25, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Steve Duvall, Gerry Krieser, Roger Larson, Greg Schwinn, Cecil Steward, Mary Bills-Strand and Tommy Taylor; Marvin Krout, Ray Hill, Brian Will, Becky Horner, Greg Czaplewski, Duncan Ross, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes for the regular meeting held June 11, 2003. Motion for approval made by Bills-Strand, seconded by Larson and carried 8-0: Carlson, Duvall, Krieser, Larson, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

##### **BEFORE PLANNING COMMISSION:**

June 25, 2003

Members present: Carlson, Duvall, Krieser, Larson, Schwinn, Steward, Bills-Strand and Taylor.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 2024; FINAL PLAT NO. 02043, HARTLAND'S CARDINAL HEIGHTS 3<sup>RD</sup> ADDITION; and COUNTY FINAL PLAT NO. 03015, STEVENS CREEK ESTATES ADDITION.**

Krieser declared a conflict of interest on Item No. 1.3, County Final Plat No. 03015, and abstained from voting on the Consent Agenda.

Steward moved to approve the Consent Agenda, seconded by Bills-Strand and carried 7-0: Carlson, Duvall, Larson, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'; Krieser declaring a conflict of interest.

Note: This is final action on Special Permit No. 2024 and the Hartland's Cardinal Heights 3<sup>rd</sup> Addition Final Plat No. 02043, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**COMBINED PRE-EXISTING USE PERMIT/  
SPECIAL PERMIT NO. 10A  
TO REVISE THE BOUNDARY AND REDUCE  
THE FRONT YARD SETBACK  
ON PROPERTY GENERALLY LOCATED  
AT 66<sup>TH</sup> AND "O" STREETS.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 25, 2003

Members present: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn.

Staff recommendation: Denial.

There were no ex parte communications disclosed.

**Proponents**

**1. J.D. Burt of Design Associates**, 1609 N Street, appeared on behalf of Kimberly Carbullido, representing the owner. Burt explained that there have been several right-of-way takings adjacent to East Park that have rendered three building pad sites to be in noncompliance with design standards, i.e. Hollywood Video, DaVinci's and the northerly portion of the strip mall along 66<sup>th</sup> Street. During the right-of-way takings the owners were of the understanding there would be no difficulty rebuilding any one of these sites upon damage by fire or for remodeling. They have since become aware that that may not be true. The intent of this application was to validate the existing building envelopes and allow the owner to reconstruct in a similar fashion to what they have today in the event there was some sort of disaster that required reconstruction.

Having reviewed staff comments, Burt indicated that he understands the landscaping requirements, although he is not sure the owner agrees.

Larson sought to clarify that this action is just to make it possible to reconstruct these buildings with the same setbacks if they are destroyed by any reason. Burt used Hollywood Video as an example--if that building was rendered inhabitable or needed to be replaced, they could not build the building in the same location because of the right-of-way taking. If they are

required to move the building back by the 13' taken as part of the right-of-way project, they will lose parking stalls and they end up with a piece of real estate that cannot be used in the same fashion. He is not certain how the value came to \$275,000, but the desire is to be able to build what exists today.

**2. Kim Carbullido**, attorney for the applicant, acknowledged that the owner did receive compensation of approximately \$275,000, although that is on appeal. This compensation is a result of the taking. The amount did not include any type of compensation for rendering the building as "nonstandard". The owner had been told by a representative during the takings hearing that a special use permit such as this request, as far as they knew, had never been denied. The owner wants to be made whole again and the desire is to be able to use the buildings in the manner as originally intended, and in the event there is destruction, they want to rebuild. The \$275,000 did not include any compensation for the nonstandard status, and it also did not include a taking that is just north on 66<sup>th</sup> Street.

Carbullido further stated that the applicant has stated that if this permit is approved, the appeal to the City for compensation for the nonstandard use will be withdrawn.

Schwinn referred to the landscaping issue. There was currently landscaping in place. Did you lose landscaping with the street widening? Burt was not sure. Carbullido believes that approximately \$5,000 was awarded for landscaping. Burt has not seen the plans and he is not sure whether that \$5,000 for landscaping was specific to landscaping adjacent to pad 1 or landscaping along 66<sup>th</sup> Street. From the applicant's perspective, if they can be made whole and plant a few more bushes, they would like to do that.

### Support

**1. Margaret Blatchford**, Assistant City Attorney, appeared on behalf of the City Attorney and as representative of the city in the condemnation. She stated that the City Law Department is recommending approval of this action. Condemnation presents a unique situation and can create a hardship to those property owners. She believes this application is the proper remedy.

Steward wondered whether there is a circumstance that as long as they use the building and/or the building is changed in some manner beyond their control, that they have the authority to rebuild, but if it changes for any other use or there is any other action, it seems that approval of this would negate a future unpredictable circumstance on behalf of the property owner rather than the city. Blatchford responded that the condemnation has reduced their front yard requirements and they will not be able to rebuild or enlarge unless they have a variance to this use permit. Whether planning has historically recognized that in the past, she does not know. But she believes the attorney for the condemnee was correct in saying that we did offer that as a solution.

There was no testimony in opposition.

**Staff questions**

Steward asked staff to respond to his concern about future circumstances upon rebuilding. Ray Hill of Planning staff offered that if for any reason the setback is changed by action of the city, either by changing the zoning ordinance or by the taking or by the acquisition, the property line changes and then it changes the setback. In the past, this has been determined to create a nonstandard use because of the fact that it was originally correct and then changed by ordinance or the acquisition of right-of-way. It falls under the nonstandard provision, i.e. if the building is completely restored, it must comply with the setbacks of that district. Steward understands the technicality of the nonstandard use; however, he is searching for a process that recognizes the property owner's interest and the city's desire. Rick Peo of the City Law Department stated that there is a lot of historical precedence of granting these types of situations. Frequently, when expanding the right-of-way of arterials, we look for 60' vs. 50'. We negotiate with the developer--if they give 50' voluntarily, we reduce the required setback as a tradeoff. He believes that is analogous to this situation. We want to avoid increasing damages for which we have to offer compensation to make the parties whole. Here you have a use permit that you are authorized to modify so he believes it is straight forward. Frequently, we have to argue that the city has never denied a special permit to rebuild or reconstruct a nonstandard or nonconforming use. If this use permit application is denied, it is kind of implied that we would deny a special permit if that situation would arise and we would be more inclined to have to pay compensation. He believes there is background and there are principles to support this proposal.

Schwinn believes Steward is trying to get to the point that if one building burns down or gets damaged in a flood, they need to be able to rebuild, but by changing the special permit, are we giving the permission for them to tear those buildings down and build something different with the same setbacks. Peo's response was that the pad sites have been approved and they would have to amend the use permit to change the pad sites.

Larson confirmed that there has already been compensation for taking the right-of-way. Peo stated that it is on appeal at this time. The condemnees have indicated that they would not seek the additional loss for nonstandard use if this permit is granted.

Schwinn wondered whether the agreement to withdraw the appeal needs to be listed as one of the conditions of approval. Carbullido stated that she does have a letter from her client that states if this permit is approved, they will withdraw the appeal. Peo does not believe there needs to be a condition per se.

Carlson commented that it's the use permit that gives the Planning Commission and City Council latitude to be specific about the pad sites and their location. This permit allows

reduction of front yard setback. Is that carte blanche? Is there something that differentiates between existing building and proposed new building? Peo stated that nonconforming and nonstandard uses are allowed to remain and exist as they are, but cannot be reconstructed or extended unless they comply with the code, except that there is a special permit provision to allow a nonconforming use to be reconstructed notwithstanding violation of the zoning code. That's kind of a "wait and see" application. Peo further clarified that if the use permit is amended, the building envelope is reduced to a reduced setback, so that they could come in automatically and rebuild at the same place they are today.

Response by the Applicant

Burt further added that through the years, there has been the practice to accept public access and utility easements in lieu of right-of-way for the same purpose. If this had not gone through condemnation, we would not be here today.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 25, 2003

Bills-Strand moved approval, with conditions, seconded by Larson and carried 8-0: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn voting 'yes'.

**WAIVER OF DESIGN STANDARDS NO. 02005  
TO WAIVE SANITARY SEWER, WATER MAIN,  
STORM SEWER, STREET TREES, SIDEWALKS AND  
STREET PAVING, ON PROPERTY GENERALLY  
LOCATED AT NO. 1<sup>ST</sup> STREET AND "R" STREET.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 25, 2003

Members present: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Becky Horner of Planning staff submitted a memo clarifying and setting forth the specific conditions of approval as discussed in the Analysis in the staff report.

Proponents

**1. J.D. Burt of Design Associates**, 1609 N Street, appeared on behalf of **The People's City Mission**, the applicant. This permit started several years ago. Design Associates was involved in some floodplain development permits that were approved for the previous owners

located on the north side of “R” Street between 1st and 2<sup>nd</sup> Streets. After a number of months, the Mission purchased both of the properties, including the Meyer property at 2<sup>nd</sup> and “R” Street. Design Associates was contacted regarding an amendment to the floodplain permit. What we have today is a floodplain permit that allows filling the property south of the east/west alley—a permit to fill both north and south of that alley. They do not have a permit to fill the alley in between. They began with an application to vacate that alley so that they would be able to fill it across the top. As part of that alley vacation, the standard comment was to provide an administrative final plat to absorb that vacated right-of-way into an adjacent lot. In this case, there were some interior lots that would not be afforded any access to right-of-way if the alley was vacated. Therefore, application was made for the final plat, and with that come the requirements for sewer, water, storm sewer, etc. As they began this process, it was found that the property could be platted as a non-buildable outlot until sanitary sewer is available or they could construct the sanitary sewer. The Mission opted to construct the sanitary sewer and secured easements to run a public sewer on vacated “Q” Street. The Mission believed that the \$70,000 for a sanitary sewer would be the only condition of approval on the administrative final plat.

Burt believed that they had reached agreement with the staff on these waiver requests, but these improvements are now being tied back to a special permit, which special permit does not yet even include this property.

Burt then submitted a map showing the affected property owners, generally north of “O” Street in the vicinity of 1<sup>st</sup> and 2<sup>nd</sup> Streets, that would be affected or benefitted by paving of the streets. This applicant is being required to pave streets that don’t even touch the plat or special permit. There are a lot of other property owners that will receive benefit if this paving is done. Burt is not sure The Mission should be spending its funds on infrastructure.

Burt also submitted comments from Public Works & Utilities dated March 4, 2002, and March 18, 2002, wherein Public Works does not object to the requested waivers, yet these improvements are now being made a condition on the plat that ties these improvements to a special permit.

Burt clarified that The City Mission is currently located at 110 “Q” Street, and the property on the north side of “R” Street is the property the Mission has purchased as part of the plat.

Schwinn asked for clarification of the proposal. Burt indicated that they are only requesting to fill the floodplain. The Mission is also currently working with Mike Bott on a master plan for expansion of the limits of the special permit, but that application is not yet before the Commission.

**2. Ron Buchinski**, Executive Director of People’s City Mission, pointed out that homeless services in Lincoln have been seriously curtailed in the past year. He referred to the Salvation

Army; Day Watch, which is presently operating part-time because of funding cuts; and Friendship Home, which is operating at about ½ of their capacity because of financial problems. Since The City Mission located out on “Q” Street in 1987, there had been no expansion until this past September when they completed a 24,000 sq. ft. addition. The City Mission will house about 1400 different women and children this year. In previous years, The Mission has housed over 500 different women and children, half of which are transient and most of which The Mission intercepts before they reach downtown. Some are very, very high risk.

The Mission has been able to purchase the Meyer property right across the street behind The Mission and will be requesting to convert that building into a men’s shelter in order to expand their men’s services and keep these high risk individuals away from women and children. There will be 1600 different men at The Mission this year. He believes they can do some additional things with these men that they are unable to do right now because there are women and children in the same building. The building will meet any safety and compliance issues. The Mission will appreciate any discretion regarding the surrounding property. It will be a nice facility and is in the best interests of Lincoln. The goal is to have a safe and healthy place, in addition to a place for men to come in where they can be assisted as well.

Larson sought further clarification of this specific waiver request. Buchinski explained that they want to convert the Meyer warehouse into a men’s emergency shelter; however, they do not want to be in the position to have to pave the streets, put in sidewalks, street trees, etc.

Burt further attempted to explain by stating that an application has been filed for an administrative final plat. In that final plat application, the applicant has requested the waiver of the street improvements along the two frontages at 1<sup>st</sup> and 2<sup>nd</sup> Street. The staff report suggests that they be required to pave 1<sup>st</sup> and 2<sup>nd</sup> Street all the way to “P” Street in conjunction with the first building permit that is not part of this application. Burt suggested that a) he is not sure this is the right thing to do, and b) The Mission is certainly not the only property owner that is going to benefit from the paving. If the city so decides to pave this area, it should be done in its entirety. With a final plat, Burt believes that this owner should only be responsible to pay for improvements adjacent to the street frontage. However, the way he reads the conditions of approval, The Mission may be asked to pave everything down to “P” Street in order to get a building permit. Burt would like to have the improvements waived. The Mission may not have any objection to a district being created for the improvements.

Burt further explained that the Meyer property at the northwest corner of 2<sup>nd</sup> and “P” is not part of the current special permit, and it is not part of this application. The staff is requesting that The Mission construct these streets in conjunction with that building permit.

Carlson noted that the administrative final plat involves the alleyway, but it appears that all of the activity is outside of that plat. Burt responded, stating that The Mission has an approved

floodplain permit both north and south of that alley. They want to buy the alley from the city (the alley doesn't serve any purpose) so that they can amend the floodplain permit to fill that area. The Mission has also agreed to reduce the floodplain permit by the equivalent volume and put a conservation easement upon it. Burt is not sure why the improvements are even a part of the staff report on this waiver request. There would not need to be any replatting.

Carlson is worried about future condition. If The Mission is successful and creates more buildings and more of a campus setting in the future, what is the mechanism to get sidewalks to serve the area north of "R" Street? Burt suggested that the City Council has the opportunity and authority to create paving and sidewalk districts. He believes it is unfair to single out one property owner with a building permit or special permit for these improvements. Carlson believes that the property owner would typically be asked to serve its side of the street. Burt concurred, but that is not the way the condition is stated. If a district is appropriate, Burt does not believe The Mission would object.

There was no testimony in opposition.

#### **Staff questions**

Steward wanted to know what happened between March of 2002 and June of 2003 to create the requirement for these conditions to be attached to the building permit. Becky Horner of Planning staff indicated that the staff and The Mission discussed their future plans about a year ago. It was the staffs' understanding that The Mission plans to grow in this area. Since this application came forward, the Planning Department also received an application from Michael Bott for expansion of the boundaries, which gives them the possibility to come forward with an administrative amendment when The Mission is ready to decide what kind of facilities they want to place in the area. Staff believes these improvements are necessary, especially for the population that will either be walking or driving. The staff understands that they are not ready to expand at this time, and the proposed conditions on this waiver request serve to delay the construction of these improvements until they are ready to expand. These conditions will not prevent them from moving forward to utilize the Lincoln Bumper building. These conditions relate to new construction.

Steward commented that this is an unusual set of circumstances and he thinks they require unusual solutions. He does not have a solution to suggest, but we've located The City Mission adjacent to a salvage operation, in a floodplain, and on non-paved streets, and it seems that the city has a responsibility to participate in the solution to these problems. Steward believes that requiring the ordinary requirements as if this were an ordinary facility is tantamount to the city of not living up to its responsibilities. He is a bit disturbed that there is information before the Commission that requires action that was not anticipated in the original application.



Carlson, however, believes that the conditions need to be satisfied at the time that the area to the north gets new buildings because there will need to be sidewalks and adequate streets.

Schwinn inquired about the impact fee when The City Mission comes in with a building permit for a new domiciliary care facility. What's their impact fee going to be, and what does it go to?

Carlson is not sure this straight waiver is the answer. What's another option for having these public improvements completed aside from this? A district may or may not occur. Horner suggested that they could plat it as an outlot to prevent any building on that property. Then when they come forward to replat it as lots, these assessments would come forward again. This was offered as an option a year ago, but the plat was never revised to show an outlot.

Steward wondered whether one option would be to deal with the original waiver request as stated, without the additional conditions regarding street paving—waiting until we actually have an official request on that property which has triggered the improvement. And in the meantime, there needs to be a search for other solutions to the improvement of the infrastructure around that entire district. Ray Hill of Planning suggested that the condition of approval might be that the applicant would agree not to object to the creation of an assessment district in the future. Hill believes that there may also be some provision that says if a project is within a mile of Old City Hall, the petition process is not required, but this will require some research. It would be acceptable to the staff if the Commission added the condition that the applicant would not object to creation of assessment districts for these improvements.

Hill further stated that it would not be the staffs' intent to force The City Mission to pay for all of this. There are other mechanisms to have the other benefitting properties help pay the costs.

#### Response by the Applicant

Burt believes that a district is appropriate and that way everyone that participates will be obligated to pay their fair share. If the Commission wishes to add that as a condition, the applicant will not disagree. Burt then expressed appreciation to the two property owners who have granted easements.

Carlson wondered what would trigger the district. Burt stated that there is an ordinance that allows the City Council to ask for that district within the radius of Old City Hall. The adjacent property owners would be asked whether they want a street or whether they want to purchase the property. Burt believes that they may be able to sit down with some of the neighbors and vacate some of the streets and reduce the amount of paving and utilities.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 25, 2003

Bills-Strand moved to approve the waivers requested, with the condition that the property owner agrees not to object to the creation of improvement districts for sidewalk, paving, sewer and water in the future, seconded by Larson.

Carlson will support the motion, but it does seem strange that the road that has lead us here is such that we have a piece of land upon which we know something is going to happen and we know that public improvements need to be made, but we have not spelled out how, when, where or who is going to pay for them. Maybe there would have been a better way to do this.

Bills-Strand believes this represents a growing need in Lincoln that needs to be met.

Steward stated that his comments relate to the applicant and to the city. It seems that the applicant needs to be aggressive to request a specific solution and make that request relate to their next specific improvement intentions. It is a planning issue, it is an administrative issue, and it is definitely in the city's best interests that this be resolved.

Schwinn agreed.

Motion for approval, upon condition that the owner not object to the creation of assessment districts in the future, carried 8-0: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn voting 'yes'.

**MISCELLANEOUS NO. 03004**

**TO FIND THE ANTELOPE VALLEY REDEVELOPMENT  
AREA TO BE BLIGHTED AND SUBSTANDARD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 25, 2003

Members present: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn.

Staff recommendation: A finding that the area is blighted and substandard.

There were no ex parte communications disclosed.

Proponents

**1. Wynn Hjermsstad** of the Urban Development Department presented the proposal. Most people know that Antelope Valley is addressing stormwater, transportation and community revitalization issues in the core of the City. Urban Development is acting on behalf of JAVA (Joint Antelope Valley Authority) to take the lead on the community revitalization leg of the Antelope Valley project. This is the first step in the community revitalization effort.

**2. Tim Keelan of Hanna:Keelan Associates**, who did the Blight Study, stated that the blight study was conducted under the Community Development Law of the State of Nebraska and involved almost 1100 acres. They looked at each of the blight and substandard factors. It is the professional opinion of Hanna:Keelan Associates that the area does meet the criteria of the Community Development Law and that the area is blighted based upon that law. The duration of the study was approximately October to May, about a 6-month process. They did work through the winter months and had to wait for some winter thaws throughout the process to look at all the criteria.

Steward understands it is a complicated process and some procedures require building observations. Keelan stated that the analysis was done on an area-wide basis including street conditions and layouts, layouts of the lots, diversity of ownership, other important environmental blighting factors, improper subdivision, age of structures, etc. They did perform some random sampling, selecting 125 structures, and did exterior and interior inspections.

Larson inquired whether a study like this is more subjective than objective. Keelan indicated it to be a combination of the two. There are criteria to follow in looking at some of the factors. We depend a lot on our expertise and experience. Hanna:Keelan has done blight studies across the state. With this study, they also used the services of Architecture One, and Research Associates did the random sampling process. There was also an attorney and a real estate appraiser on the team.

Keelan further explained that the study is a parcel-by-parcel land use analysis. It is one of the more accurate land use analyses.

**3. Kevin Siebert**, the attorney on the study team, offered that in a large area like this, it is not logistically or economically possible to review and study every structure. That is the reason experts are retained as part of the team to statistically assure that the sample was sufficient to be an appropriate representation of the area. It is a very comprehensive and detailed process. His role is to be sure that if someone were to challenge the study and the finding, that we are comfortable that the process was legally correct.

There was no testimony in opposition.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 25, 2003

Larson moved a finding of blighted and substandard, seconded by Bills-Strand and carried 8-0: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn voting 'yes'.

**ANNEXATION NO. 03002;**

**CHANGE OF ZONE NO. 3411**

**FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL;**

**and**

**USE PERMIT NO. 150,**

**ON PROPERTY GENERALLY LOCATED**

**AT SO. 91<sup>ST</sup> STREET AND HIGHWAY 2.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 25, 2003

Members present: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn.

Staff recommendation: Approval of the annexation and change of zone, and conditional approval of the use permit.

There were no ex parte communications disclosed.

Brian Will of Planning staff submitted a letter from HWS Consulting requesting a two-week deferral to allow them time to address some of the conditions of approval.

Proponents

**1. Allen Jambor** of HWS Consulting Group, appeared to request the two-week deferral.

Steward moved to defer two weeks, with continued public hearing and administrative action on July 9, 2003, seconded by Bills-Strand and carried 8-0: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn voting 'yes'.

**SPECIAL PERMIT NO. 2010**

**PINE LAKE HEIGHTS SOUTH 8<sup>TH</sup> ADDITION**

**COMMUNITY UNIT PLAN,**

**ON PROPERTY GENERALLY LOCATED**

**AT SOUTH 30<sup>TH</sup> STREET AND YANKEE HILL ROAD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 25, 2003

Members present: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

The Clerk announced that the applicant has requested an additional two-week deferral to advertise an additional waiver request.

Bills-Strand moved to defer two weeks, with continued public hearing and administrative action on July 9, 2003, seconded by Krieser and carried 8-0: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn voting 'yes'.

**COMPREHENSIVE PLAN AMENDMENT NO. 03016**  
**TO AMEND THE 2025 LINCOLN/LANCASTER COUNTY**  
**COMPREHENSIVE PLAN, TO CHANGE A PORTION OF PROPERTY**  
**DESIGNATED AS "ENVIRONMENTAL RESOURCES" TO**  
**"INDUSTRIAL" BETWEEN SALT CREEK AND ARBOR ROAD,**  
**WEST OF N. 70<sup>TH</sup> STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 25, 2003

Members present: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn.

Staff recommendation: Approval, as revised on June 9, 2003, maintaining the 500 foot buffer around the Category II Saline Wetland on the adjoining property to the west, and including the mitigation and preserved wetlands identified by the applicant.

There were no ex parte communications disclosed.

**Proponents**

**1. Peter Katt** appeared on behalf of **Dwaine Rogge**, the property owner, and referred to the revised staff report, pointing out that it notes that the designations made in the Comprehensive Plan as to the environmental resource were based upon a 1994 map. It wasn't done by on-site field verifications, but rather from a 1994 map created by a coordinating group including Nebraska Game and Parks, DEQ, Army Corps of Engineers, U.S. Fish and Wildlife and U.S. Environmental Protection Agency. When the Comprehensive Plan adopted the environmental resource designation, it recognized that this 1994 mapping was the best available at the time and that it was important to get something in place.

Katt went on to state that in addition to that 1994 map, in order to provide some additional protection, the boundaries were extended an additional 500' in the off-chance that it was not very accurate. It specifically said they were going to adopt those 500' zones, "until additional base line research can be completed".

Katt then referred to page 3 of the revised staff report. One of the key components and reasonings behind the adoption of the environmental resource was the fear of the Tiger Beetle being designated as an endangered species. One of the important points Katt wanted to point out was that when the Comprehensive Plan was adopted, it states, "a management plan for the Salt Creek Watershed and Tiger Beetle habitat should be prepared by December, 2002." Katt further pointed out that all of these other issues in terms of the designation of habitat have not transpired. We are now six months past the target date and there has been no additional effort to further delineate the environmental resource in this area.

Katt explained that the application of his client is based upon a report that was prepared by Olsson Environmental and paid for by his client. A full copy of the report was submitted to the Planning staff as supplemental material. He handed out an email from one of the individuals at Olsson that was involved in this delineation outlining the history of how and what they did with regard to this specific property. The various governmental entities received this communication. In addition to the Army Corps of Engineers' approval, which allowed the wetland mitigation to be completed, there are letters from Game and Parks and U.S. Department of Interior agreeing with the Army Corps of Engineers' determination allowing this project to proceed.

Katt believes the revised staff recommendation suggests that it is appropriate to change the environmental resource designation to industrial, except for the 500' buffer because the adjoining property has not yet been delineated or further refined. Katt suggested that continuing to include that 500' buffer on his client's property is arbitrary and capricious. The basis by which that is done is the 1994 study, which the studies done for his client on his client's property show is dramatically overstated. His client does not have the legal right to go on the other property and do any work in connection with that—presumably these governmental agencies do. Just having gone through this process, it demonstrates the importance of having accurate information in the Comprehensive Plan because it does significantly impact the speed and ability for someone to come forward and propose projects. To say the 500' environmental resource designation will not have an impact on his client as he moves forward with any specific development proposals is not true because it is one of the first comments that the staff will raise. There is no way for his client to address that issue because they cannot go onto the other property and confirm whether there are or are not any environmental resources.

Katt requested that the applicant's proposal be approved and that the environmental resource designation be removed, except for those areas on the property that will be used as mitigated wetland area.

Steward commented that the Commission received testimony two weeks ago from a representation of Game and Parks that they would continue to prefer to see no change made in the Comprehensive Plan, yet he sees in a letter dated April 17, 2000, that they acknowledge that your client is following the mitigation guidelines, but they go on to recommend to further protect the area by the establishment of a 30' vegetated buffer around the mitigation area. Steward asked whether Katt's client has taken any of that into account? Katt's response was that the wetlands have been mitigated. The property has not been developed but he has no doubt that when it is developed, the 30' buffer between the mitigated wetlands area and the actual development will be recognized. Steward believes G&P is offering assistance in that regard. Katt pointed out that Game and Parks has changed its position from 2000 to today. Pointing out the date of that letter, Katt suggested that these are the types of things in terms of continual delay and changing rules that cause developers heartburn. But, Steward suggested that it causes concern for new information coming in all the time on unknown environmental context condition. He thinks there are arguments on both sides.

Carlson asked for clarification of the staff recommendation. Duncan Ross of Planning staff stated that the staffs recommendation is to move forward today with the recommended amendment, i.e., not as proposed by the applicant, but by adding the 500' buffer.

There was no testimony in opposition.

#### Response by the Applicant

Katt pointed out that there is no scientific basis at all for a 500' buffer—none. The point that he tried to make quickly was that Game and Parks and these other environmental agencies were supposed to have a plan in place by December, 2002. It is now June, 2003. The staff report recognizes that they continue to work on it with an indefinite date, so the question is, at what point is it fair to say "let's move on until there is some scientific basis for a 500' buffer"? Katt submitted that without any basis and scientific fact, and without any basis to believe the 1994 study is valid, goes well beyond what we should be doing. That's why he does not believe the 500' buffer is justified on any reasonable basis.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 25, 2003

Bills-Strand moved to approve the amendment as requested, changing the buffer to a 30' vegetated buffer zone as recommended by Game and Parks, seconded by Duvall, and carried 5-3 (Bills-Strand, Larson, Krieser, Duvall and Schwinn voting 'yes'; Steward, Carlson and Taylor voting 'no').

There being no further business, the meeting was adjourned at 2:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 9, 2003.

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